

FILED IN CHAMBERS

U.S.D.C. - N.D. GA.

NOV 17 2015

IN THE UNITED STATES DISTRICT COURT James M. Hatten, Clerk
 FOR THE NORTHERN DISTRICT OF GEORGIA *James M. Hatten* Deputy Clerk
 ATLANTA DIVISION

DARRELL MATHIS,	:	
	:	
Movant	:	CRIMINAL ACTION FILE NO.
	:	1:13-CR-448-1-ODE
v.	:	
	:	CIVIL ACTION FILE NO.
UNITED STATES OF AMERICA,	:	1:14-CV-3922-ODE
	:	
Respondent	:	

ORDER

This criminal case is before the Court on Movant's 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence [Doc. 29] and "request for order," which the Clerk docketed as a motion [Doc. 32]; the Final Report and Recommendation ("R&R") of United States Magistrate Judge Alan J. Baverman filed September 21, 2015 [Doc. 34]; and Movant's objections [Doc. 38].

The District Court must "make a de novo determination of those portions of the [R&R] to which objection is made" and "may accept, reject, or modify, in whole or in part, the [R&R]." 28 U.S.C. § 636(b)(1). Portions of the R&R to which no objection is made are reviewed only for clear error. Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006) (per curiam).

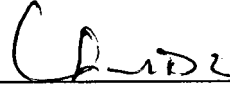
In the R&R, the Magistrate Judge recommended that Movant's § 2255 motion be denied, the "request for order" be denied, and a certificate of appealability be denied [Doc. 34 at 10]. The

Magistrate Judge determined that (1) Movant's two grounds for relief are procedurally defaulted because he did not file a direct appeal, and (2) Movant failed to show cause and actual prejudice to overcome the default [Id. at 4-8].

In his objections, Movant asks that his "charge . . . for possession of a firearm in furtherance of a drug trafficking crime . . . be dismissed as a matter of law" [Doc. 38 at 6-7]. It is too late for Movant to seek dismissal of that charge because he already pleaded guilty and was convicted and sentenced [see Doc. 34 at 3-4]. Movant does not address the procedural default of his § 2255 grounds for relief. Instead, Movant re-argues his first ground and presents a new ground for relief based on the Tenth Amendment [Doc. 38 at 2-7]. Even if it were proper for Movant to amend his motion to vacate at this time, his new ground for relief is also procedurally defaulted. The Court concludes that the Magistrate Judge properly analyzed the motion to vacate.

The Court having read and considered the R&R and Movant's objections thereto, the R&R [Doc. 34] is ADOPTED as the opinion and order of the Court. For the reasons set forth in the R&R, the motion to vacate, set aside, or correct sentence [Doc. 29] is DENIED, the "request for order" [Doc. 32] is DENIED, a certificate of appealability is DENIED, and civil action number 1:14-cv-3922-ODE is DISMISSED.

SO ORDERED, this 16 day of November, 2015.



ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE